IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION: PIETERMARITZBURG

CASE NO: 17018/2023P

In the matter between:

PRINCE MBONISI BEKITHEMBA KA BHEKUZULU	1ST APPLICANT
PRINCE VULINDLELA KA BHEKUZULU	2ND APPLICANT
PRINCE MATHUBA KA BHEKUZULU	3RD APPLICANT
PRINCE GAYLORD MXOLISI KA BHEKUZULU	4TH APPLICANT
PRINCESS LINDIWE KA BHEKUZULU	5TH APPLICANT

AND

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	1ST RESPONDENT
MIN OF CO-OPERATIVE GOVERNMENT & TRADITIONAL AFFAIRS N.O.	2ND RESPONDENT
MIN OF AGRICULTURE, LAND REFORM & RURAL DEVELOPMENT N.O.	3RD RESPONDENT
PREMIER OF KWAZULU-NATAL PROVINCE	4TH RESPONDENT
DIR-GENERAL: KZN OFFICE OF THE PREMIER	5TH RESPONDENT
INKOSI RUBERT SIFISO SHINGA	6TH RESPONDENT

KING MISUZULU KA ZWELITHINI ZULU N.O.	7TH RESPONDENT
INGONYAMA TRUST	8TH RESPONDENT
INGONYAMA TRUST BOARD	9TH RESPONDENT
NKOSI THANDA MZIMELA	10TH RESPONDENT
ADVOCATE LINDA ZAMA	11TH RESPONDENT
INKOSI MABHUDU ISRAEL TEMBE	12TH RESPONDENT
THANDI DLAMINI	13TH RESPONDENT
NOMUSA ZULU	14TH RESPONDENT
NTAMBUDZENI DANDY MATAMELA	15TH RESPONDENT
INKOSI PHALLANG BOKANG MOLEFE	16TH RESPONDENT
INKOSI SIBONELO MKHIZE	17TH RESPONDENT
LISA DEL GRANDE	18TH RESPONDENT
VELA MGWENGWE	19TH RESPONDENT
SIYAMDUMISA VILAKAZI	20TH RESPONDENT
AMAKHOSI OF THE PROVINCE OF KZN	21ST RESPONDENT

J U D G M E N T

OLSEN J

[1] The death of the late King Goodwill Zwelithini Ka Bhekuzulu on 12 March 2021 has generated a rash of litigation over, or otherwise connected with, the issue as to who should succeed the late King. This is one such case.

[2] In terms of s 8 of the Traditional and Khoi-San Leadership Act, 3 of 2019, when the position of a King must be filled the Royal Family, acting with due regard to applicable customary law and customs, must identify a person to assume the vacant position and apply to the President for the recognition of that person as the King or Queen. Although challenged as to their validity, those two processes were followed in the present instance. The seventh respondent, King Misuzulu Ka-Zwelithini Zulu was identified as successor by a meeting of the members of the Royal Family held on 14 May 2021. On 16 March 2022 the President of the Republic of South Africa, the first respondent, made the decision to recognise the seventh respondent as the monarch. The seventh respondent was accordingly installed as King of the Zulu nation.

[3] The present application was launched by four applicants. (In his founding affidavit the first applicant identified five applicants, but one of them, cited as the fourth applicant, did not deliver the promised affidavit identifying himself as an applicant, and adopting the contents of the first applicant's founding affidavit as the basis of his case.) The four applicants are siblings, three of them being brothers, and one a sister, of the late monarch. (I used those terms with due regard to Zulu custom, to which the concept of a "half-brother" is not known.) The present proceedings were launched by them in November 2023, shortly before judgment was handed down by the Gauteng Division of the High Court, Pretoria in an application which the applicants had launched, together with others, for orders reviewing and setting aside the Royal Family's identification of the seventh respondent as successor, and the President's recognition of the seventh respondent. Judgment in that case was delivered in December 2023. The Gauteng Division refused to set aside the identification of the seventh respondent, but did set aside his recognition by the President. Leave to appeal to the Supreme Court of Appeal against both

those decisions was granted. In terms of s 18 of the Superior Courts Act, 2013 the operation of the orders of the Gauteng Division is therefore suspended.

[4] The present proceedings were instituted by a notice of motion in which two distinct sets of relief were sought. The principal relief (perhaps one ought to say, the notionally principal relief) is set out in Part B of the notice of motion. The notice of motion incorporates the requirements of Rule 53 for the purposes of the adjudication of Part B. Interdicts are sought in Part A of the notice of motion and the grant of them is claimed to be urgent. This judgment concerns Part A of the notice of motion.

[5] Twenty-one respondents are cited. Those that delivered affidavits confined their attention to the relief sought in Part A of the notice of motion. Their rights to respond to Part B were reserved pending the delivery of any supplementary founding papers such as are permitted by the provisions of Rule 53. In identifying the respondents I will mention only those who have responded to the claim for relief in Part A of the notice of motion. I have already identified the first and seventh respondents.

[6] The second and third respondents are part of the National Executive. The former is the Minister of Co-Operative Government and Traditional Affairs and the latter the Minister of Agriculture, Land Reform and Rural Development. The Principal State Law Advisor in the Presidency attested to an affidavit on behalf of the first respondent in which he recorded that the first respondent abides the decision of the court, and added one or two observations not presently material. The Director General of the Department of Traditional Affairs attested to an affidavit on behalf of the second respondent in which he recorded that the second respondent's opposition to the application is confined to denials she makes of limited allegations made in the founding papers. The minister in effect abides the decision of the court. The third respondent herself attested to an affidavit in which, with respect the relief sought in Part A, she recorded her decision to abide the decision of the court. However, certain allegations in the founding papers were denied and the third respondent furthermore corrected one or two misconceptions evident in the founding papers and the relief sought in Part A of the notice of motion.

[7] The fourth respondent is the Premier of this province. The fifth respondent is the Director General in the Premier's office. Where the context permits it my references to the Premier or the fourth respondent in this judgment include the fifth respondent. The Chief Director: State Law Advisory Services, KwaZulu-Natal attested to an affidavit delivered on behalf of the fourth respondent. It is called an "explanatory affidavit" which records that the fourth respondent abides the decision of this court. The affidavit sets out a helpful account of the legislative framework which governs the financial affairs of the seventh respondent and the Royal House, insofar as they are funded by the State.

[8] The eighth and ninth respondents are respectively the Ingonyama Trust (the "Trust") and the Ingonyama Trust Board (the "Board"). (It was strictly speaking unnecessary to cite the ninth respondent.) The chairperson of the Board and all members of the Board were personally cited as the tenth to eighteenth respondents. The Chief Executive Officer of the Trust is cited as the nineteenth respondent. He attested to an affidavit on behalf of all the respondents mentioned in this paragraph, recording their opposition to the relief set out in Part A of the notice of motion.

[9] With that somewhat lengthy introduction I turn to the issues to be decided at this stage, namely those springing from Part A of the notice of motion. I should mention first that much of the relief sought in Part B of the notice of motion rests upon the proposition that the seventh respondent is not a lawfully appointed monarch. The question as to the validity of the seventh respondent's appointment was placed in the hands of the Gauteng Division by the applicants. As already mentioned this application was launched before the judgment in the Gauteng Division was handed down, and I have little doubt that the applicants were aware of the fact that whatever the outcome in that division, it was overwhelmingly probable that the matter would proceed further, at least to the Supreme Court of Appeal. That has happened. It is difficult to resist the conclusion that the main application, that is to say the application for relief under Part B, was conceived as a device upon which to hang the proposition that the relief sought in Part A is interim in nature, and accordingly less onerous to establish than would be the case if final interdicts were sought.

Urgency.

[10] Prayer 1 of Part A of the notice of motion asks this court to grant the application urgent status. The notice of motion reveals that the applicants intended to set the matter down in February 2024, but as it turns out they omitted to deliver the requisite notice, as a result of which there was apparently no judge or court available to hear the matter. In addition, the respondents to whom I have referred above wanted to be heard, and not all affidavits were in. The Judge President accordingly gave directions as to the delivery of further affidavits, and so on, and allocated a date in April for the hearing of the matter, when it first served before me. There was a challenge to the claim that the matter should be disposed of urgently, and the rights of the opposing parties to argue that issue were reserved, although that does not appear in the Judge President's order. The seventh respondent made an application to strike out substantial portions of the founding affidavit upon the basis that the allegations in question were scandalous, vexatious and/or irrelevant. The application took up almost all of that single day allocated to the case, and was heard upon the footing that the question of urgency still stood over. Save in a few minor respects the application to strike out was successful.

[11] Two further days, now in May 2024, were allocated to the case. The issue of urgency was argued separately and first. I took the view that by then the only benefit accruing to the applicants if the matter was afforded urgent status would be the advantageous early date of hearing which would not have been available if this matter had been placed on this court's ordinary roll. Having heard the arguments I granted the case urgent status. The arguments for and against doing so were finally balanced. The factor which motivated the decision in favour of the applicants was my perception that there is a public interest in an early decision on the disputes concerning the relationship between the seventh respondent and the Trust, and on issues raised on the papers which turn wholly or in part on the purpose and powers of the Trust.

Paragraph 2.1 of Part A.

[12] In paragraph 2.1 of the prayer in Part A of the notice of motion the applicants sought an order that, pending the final decision of the case heard in the Gauteng Division, the seventh respondent should not be entitled to occupy the position of trustee of the Ingonyama Trust. The response to this on the part of the seventh respondent went along the following lines.

(a) All the decisions required to be made in law for the installation of the seventh respondent as monarch had been made and he was in law therefore a duly installed king. That remains the case until any final order may be made setting aside the seventh respondent's elevation to that office.

(b) In terms of the Ingonyama Trust Act, 1994 the seventh respondent's position as the "trustee" of the Trust is an automatic consequence of his installation as monarch.

(c) Granting the relief sought, that pending the final determination of the Gauteng litigation the statutorily ordained position of the seventh respondent as trustee of the Trust should be countermanded and not implemented, can only be done if the decision of the Gauteng Division that the recognition of the seventh respondent as monarch be set aside is put into operation, at least in part.

(d) That requires an application under s 18 of the Superior Courts Act, given that leave to appeal against that order has been granted. The applicants did not mention s 18 in their founding papers; and made no attempt to meet the requirements of the section. In any event only the Gauteng Division has jurisdiction to grant such relief.

In my view these arguments are well founded. I would add that even if they are not, and the lower-level test applicable to interim relief can be applied, having put the matter of the unlawfulness of the seventh respondent's installation as monarch in the hands of the Gauteng Division, the applicants should have approached that Court for that interim relief.

[13] As it turns out the prayer for relief under paragraph 2.1 of Part A of the notice of motion was abandoned at the close of the applicants' argument. Putting the matter as simply as I can, the claim that interim protection was required rested on the proposition that the seventh respondent would use his position as trustee unlawfully to enrich himself. During the course of the argument the applicants' counsel came to accept the proposition that the seventh respondent did not have the power to achieve that end in his capacity as trustee of the Ingonyama Trust. There was therefore no need for the interdict sought in paragraph 2.1 of Part A of the notice of motion. Counsel's concession was correctly made, and I will deal with it further in considering the Trust's response to the relief sought against it.

Paragraph 2.2 of Part A.

[14] The relief sought in paragraph 2.2 of Part A of the notice of motion was abandoned before argument commenced as the events or actions there sought to be interdicted had already taken place.

Excursus : State financial assistance.

[15] Before dealing with the next prayer for relief contained in Part A of the notice of motion it is convenient to give a brief account of the financial arrangements affecting the monarch, the Royal family and for that matter the Inkosi in this province. The subject is neatly dealt with in the affidavit delivered on behalf of the fourth respondent.

[16] Section 211(1) of the Constitution recognises the institution, status and role of traditional leadership according to customary law, subject to the Constitution. Section 219 of the Constitution then provides that an Act of Parliament must establish a framework for determining, *inter alia,* the salaries, allowances and benefits of traditional leaders. It also provides for the establishment of an independent commission to make recommendations concerning such salaries, allowances and benefits.

[17] The Remuneration of Public Office Bearers Act, 1998 deals, *inter alia*, with the salaries, allowances and benefits of traditional leaders. They are entitled to such salaries and allowances as are determined from time to time by the President after consultation with the relevant Premier, and after taking into consideration, *inter alia*, the duties and functions of different categories of traditional leaders, and the recommendations of the Independent Commission for the Remuneration of Public Office-bearers established in terms of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997. The implementation of these provisions brings about that at present the seventh respondent receives an annual salary of a little over R1.2 million, and the Inkosi in this province somewhat less than that. The affidavit of the fourth respondent reveals that the payments of such remuneration to the seventh respondent are met by National Treasury, the Provincial Government being responsible for the salaries of other traditional leaders. It is also said in that affidavit that the seventh respondent's salary "strictly speaking, is remuneration for one's personal benefit in lieu of holding office". I am not sure that that statement is entirely correct. The remuneration attaches to the office, but in terms of the legislation just referred to it is intended to be compensation for the performance of the role and functions of the office. It should be observed immediately that the seventh respondent's remuneration is undoubtedly not sufficient to cover the costs that he incurs personally in the litigation in which his personal right to occupy the position of monarch has been challenged.

[18] In terms of Schedule 4 to the Constitution traditional leadership is a functional area of concurrent national and provincial legislative competence. Exercising its competence, the provincial government has taken on the responsibility of financing the Zulu Royal house under the KwaZulu-Natal Zulu Royal House Trust Act, 2018 (the "Royal House Trust Act", establishing the "Royal House Trust").

[19] Section 1 of the Royal House Trust Act defines the term "Zulu Royal House" as "the traditional institution of the Zulu Royal Family of the Monarch according to Zulu customary law and customs." Section 4 provides that the Zulu Royal House consists of the royal queens and "those blood relatives of the Monarch whose names appear in a list as provided from time to time by the Monarch to the Premier".

[20] The Royal House Trust Act establishes a "juristic person to be known as the Zulu Royal House Trust". In terms of s 2 the Royal House Trust is a provincial public entity and, in respect of monies appropriated by the provincial legislature to the Royal House Trust, is subject to the provisions of the Public Finance Management Act, 1999. The accounting authority of the Trust is its board of trustees, s 6(1) making provision for the appointment of persons to that board.

[21] The objects of the Royal House Trust are set out in s 3(1) of the Act which reads as follows.

'The Trust must, in a manner consistent with the provisions of this Act and within the available budget and resources –

(a) be administered for the benefit of the monarch and the other members of the Zulu Royal house, including their

(i) material welfare;

(ii) educational needs;

(iii) aspirations;

(iv) social well-being,
befitting their status; and

(b) provide for the administration, maintenance and management of the assets of the Trust, including the Royal palaces and the Royal farms.'

[22] The affidavit delivered on behalf of the fourth respondent goes on to describe the process through which monies are appropriated to the Royal House Trust by the province in accordance with law. In terms of the Public Finance Management Act and Treasury Regulations the province goes through a budgetary process each year, which includes the provision of budget projections for the next financial year. In the case of the Royal House Trust, the budget for what is to go to it becomes part of the

budget of the office of the Premier. The budget is then presented to the provincial legislature and once passed, becomes law. The law current at the time of the delivery of the fourth respondent's affidavit was the KwaZulu-Natal Appropriation Act, 2 of 2023. It includes the budgeted allocation to the Royal House Trust as part of the Premier's Vote.

[23] When circumstances necessitate adjustments to the budget it is done through an adjustment vote. One such adjustment vote took place for 2023/2024 and a copy of it is annexed to the affidavit in question. It is relevant to the relief sought against the Premier.

[24] It seems clear that the national and provincial legislative framework just described is designed to meet the reasonable financial requirements of the seventh respondent. He receives a salary and the advantage of the allocations made by the Zulu Royal House Trust for the benefit of the monarch as contemplated by s 3(1)(a) of the Royal House Trust Act. (There appears to be no legal obstacle to the seventh respondent supplementing that income by personal endeavours in other fields, should he wish to do so.) The deponent to the affidavit delivered on behalf of the fourth respondent summarises the position, stating that the fourth respondent and his Director General

'have no constitutional mandate or authority to authorise or allocate public funds to or budget for the seventh respondent's personal interests. Instead a budget is directed towards the Zulu Royal House or Royal Household which is administered in terms of [the Royal House Trust Act], and in accordance with the provisions of the PFMA'.

The Royal House Trust was not joined as a respondent in these proceedings.

Paragraphs 3 and 4 of Part A: Relief against the Ingonyama Trust.

[25] I turn now to paragraphs 3 and 4 the prayer for relief contained in Part A of the notice of motion. Counsel for the applicants pointed out during argument that the

two paragraphs are similar, and turn on the same issues of principle. In the amended form they took at the end of argument the prayers read as follows.

'Pending the determination of Part B of this application:

3. the seventh to twentieth respondents, in their respective capacities, are interdicted and restrained from using, disbursing or in any manner allocating or paying out to whomsoever, any funds from the Ingonyama Trust for the personal benefit of the seventh respondent;

4. the seventh to twentieth respondents are interdicted and restrained from dispensing funds of the Ingonyama Trust for the purpose of funding any litigation involving the lawfulness of the first respondent's decision to recognise the seventh respondent as the King of the Amazulu Kingdom.'

[26] In the course of the argument I raised with counsel for the applicants the proposition that an interdict must be worded with precision, so that its ambit is clear and readily understood, especially because the remedy for breach of any such order is contempt proceedings. I expressed discomfort with the use of the term "personal benefit of the seventh respondent" in prayer 3, as, especially in the case of a person holding an office such as the seventh respondent does, the dividing line between expenditure for the benefit of the Ingonyama Trust, and expenditure for the personal benefit of the seventh respondent, may be blurred at the margins. Counsel made no concession in that regard but professed to understand the problem. He was unable to make submissions to alleviate my concern or to show that it was unfounded. I will not deal with this any further in the light of the decisions I have reached as to the outcome of this case. But I say immediately that I had no similar misgivings about the provisions of prayer 4 which are clear enough, and indeed appear to me to be the central concern of the applicants in launching this application.

[27] The seventh respondent challenged the *locus standi* of the applicants to seek the relief set out in paragraphs 3 and 4 of Part A (and indeed paragraph 5, to which I have yet to come). The objection turns very much on challenges to the claims of the applicants to litigate on behalf of the Zulu Royal family, or on behalf of the Zulu

nation, and so on. Those challenges have merit, but I do not regard them as dispositive of the issue. The case the Ingonyama Trust must meet is that it is reasonably anticipated that the Trust will disburse Trust funds for the personal benefit of the seventh respondent as monarch. The applicants' complaint is that such expenditures, including expenditure on legal costs incurred by the seventh respondent in defending his personal position in disputes over his accession to the Zulu throne, would constitute the unlawful misappropriation of public funds. In my view the applicants have own-interest standing to place that issue before the court. They are senior members of the Royal family. (I use the word "senior" in a broad sense.) Misuse of the Trust's funds is likely to bring the royal family into disrepute, a matter which is of legitimate concern to the applicants.

[28] At least one factor in the complex matrix of facts (many of which are not fully elucidated in the papers) suggests that the applicants are the wrong people to seek the interdict relating to expenditure on legal costs. They undeniably intend to bring about that, through the intervention of this court, the seventh respondent is deprived of the legal representation he requires to defend his position as monarch. They may fairly be described as the principal litigants seeking his removal from office, and therefore have a special personal interest in the relief relating to costs, which transcends their professed concern for the public interest and the reputation of the royal family. That arguably renders them unsuitable litigants. (I will revert to this again when dealing with paragraph 5 of Part A.)

[29] However the principles set out in paragraph 34 of the judgment of Cameron J in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* 2013 (3) BCLR 251 (CC) seem to me to be decisive.

'[34] …[An] own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is not illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether *this* particular litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if "the right remedy is sought by the right person in the right proceedings". To this observation one must add that the interests of justice under the Constitution may require courts to be hesitant to

> dispose of cases on standing alone where broader considerations of accountability and responsiveness may require investigation and determination of the merits. By corollary, there may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant's standing is questionable. When the public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest.'

In paragraphs preceding the one just quoted the Constitutional Court stressed that an assessment of standing must be insulated from any consideration of the merits. That is the approach I adopt. The applicants' standing is questionable, but it is in the public interest that the applicants' claim for relief against the Trust be heard.

[30] The KwaZulu-Natal Ingonyama Trust Act 3 KZ of 1994 was assented to on 25 April 1994 by the last State President in office prior to our new constitutional dispensation, two days before the first democratic elections in this country. The effect of the Act, and undoubtedly its purpose, was to prevent the land now administered by the Trust (essentially the land previously owned or controlled by the then KwaZulu Government) from vesting in and falling under the direct administration of the new national government in terms of the Interim Constitution. The Act provided for the transfer of the land to the Ingonyama to be held in trust by him as trustee of the Ingonyama Trust. In terms of the original Act the word "Ingonyama" was defined to be synonymous with the term "the King of the Zulus". He was to hold the land "for and on behalf of the tribes and communities" referred to in a schedule to the Act, as well as for and on behalf of his subjects. He would be the only trustee and would have the power to administer the affairs of the Trust. The judgment in *Council for the Advancement of the South African Constitution and Others v Ingonyama Trust and Others* [2021] 3 ALL SA 437 (KZP) ("*CASAC*") records at paragraph 31 that the effect of the Act was to transfer approximately 2,8 million hectares of land, constituting about one-third of the total area of KwaZulu-Natal, into the control of the Ingonyama.

[31] The original Ingonyama Trust Act was extensively amended by national legislation in 1997. It attained the status of national legislation. One of the things

which was not changed is the status of the Ingonyama Trust. It was originally established in terms of s 2 of the Act as a corporate body with perpetual succession and power to sue and be sued and to do all such acts and things as bodies corporate may lawfully do. That remains the position. The section then and now provides that the corporate body is called the "Ingonyama Trust". As counsel for the Trust correctly stressed in his address, the Ingonyama Trust is not a trust at all. Trusts are not corporate bodies. Calling the Ingonyama the "trustee" of the Trust does not alter that proposition. One can only assume that the drafters of the Act considered the use of the terms "trust" and "trustee" to be appropriate because they reflected the intention that the Ingonyama would not acquire any personal right or title to the land in question. He would hold the land in trust as trustee of the Ingonyama Trust "for and on behalf of the tribes and communities".

[32] The 1997 amendment to the Act introduced a new s 2A which established a board to be known as the KwaZulu-Natal Ingonyama Trust Board. The Board would henceforth administer the affairs of the Trust and the Trust land. It would comprise the Ingonyama, or his or her nominee, who would be the chairperson of the board, and eight other members appointed by the national Minister of Rural Development and Land Reform. The minister would designate one of the eight persons to be installed as vice-chairperson of the board. The minister was empowered to make regulations concerning a number of issues, but more broadly as to "other matters as are necessary or useful to be prescribed for the attainment of the objects of [the] Act".

[33] The 1997 Amendment Act introduced a new definition of the term "Ingonyama". The word is used throughout the Act. The definition is to the effect that, save where the word is used in six identified sub-sections of the Act where it must mean the King or the trustee, it means "the Board established by s 2A" of the amended Act. I do not propose to go through these sections, to illustrate the effect of this amendment on the structure of the Act. It is enough to record that an analysis of them reveals that all powers of administration of the land and the Trust have vested since 1997 in the Ingonyama Trust Board. No power resides in the King (now the seventh respondent) by reason of him being the trustee of the Ingonyama Trust.

Thus the abandonment by the applicants of the relief originally sought in paragraph 2.1 of Part A of the notice of motion.

[34] In the original Act it was provided that the Ingonyama would hold the land in Trust on behalf of the scheduled tribes and communities, and that his administration of the land would be for the benefit of the tribes and communities in question. The 1997 amendment altered the terminology to provide that the benefit of the administration of the land should accrue to "members of" the tribes and communities and to "residents" of the land. I cannot think of any reason for the addition of the words "members of" to the phrase "tribes and communities" other than to avoid what the legislature regarded as the potential for a misinterpretation of the reference to "tribes and communities" generating a belief that benefit to the traditional leadership of such tribes and communities (principally the Inkosi) would satisfy the requirement that the administration of the land should benefit such tribes and communities.

[35] Unfortunately the papers in this application, which presently run into over 1000 pages, yield incomplete information concerning the undertakings of the Trust which generate income. The Board has a disbursement policy, a subject which I must canvass later. It records that the Trust's land includes areas with minerals, natural resources and natural features that facilitate economic development. The Trust's principal income appears to be derived from leases. Besides residential leases (which were declared unlawful in *CASAC*, supra) the policy document lists commercial leases, leases of surface rights, agricultural, telecommunication, sign board and State domestic facilities leases. There appears to be no dispute about the fact that the Trust enjoys substantial incomes.

[36] The only legal costs to be regarded as personal to the seventh respondent which are identified in the founding papers are those incurred by the seventh respondent in engaging Strauss Daly Attorneys to represent him in litigation in which his personal position as monarch was challenged.

[37] The founding affidavit contained only generalised statements that funds of the Trust were being or had been employed to meet personal debts of the seventh

respondent. No direct evidence, or evidence within the knowledge of the applicants, was tendered on this subject.

[38] In the result, if all other issues raised in opposition to the application (which I find unnecessary to traverse) were decided in favour of the applicants, the outcome of the claim for relief in terms of paragraphs 3 and 4 of Part A of the notice of motion would turn on the response of the Trust to the allegations made by the applicants.

[39] The members of the Board cited in these proceedings were appointed in May 2023. Before then the chairperson of the Board was a Mr Ngwenya. He had been in office for many years. When the application was launched the tenth respondent was the chairperson of the Board who would have been appointed to that office by the seventh respondent. I was advised from the Bar that there has been some vacillation on the part of the seventh respondent as to whether he should personally chair the Board, and the position is now apparently that he does. When this litigation commenced in December 2023 the Board members were somewhat new to their offices.

[40] The resolution adopted by the Board, and the affidavit delivered on behalf of the Trust and the Board, reveal that the Board's position is as follows.

(a) It does not dispute the validity of the principles relied upon by the applicants in seeking relief against the Board.

(b) However, it opposes any order which would prevent it disbursing funds in accordance with its disbursement policy.

[41] As to the questions of principle, it is clear that the Board agrees with the propositions that

(a) the Trust may not lawfully expend its funds on legal costs incurred by the seventh respondent personally in defending his right of accession to the Zulu throne; and

(b) the Trust may not lawfully pay any of the personal expenses or debts of the seventh respondent.

The seventh respondent disagrees, saying in his affidavit that there is "nothing illegal or untoward" should the Board pay his personal legal expenses. But nothing said in his affidavit, or for that matter said in argument on his behalf, explains the basis for that assertion.

[42] In my view the position adopted by the applicants and the Board on these two principles is correct. I see nothing in the Ingonyama Trust Act which can justify the conclusion that monies generated by the Board's administration of Trust land can be used for the personal benefit of the seventh respondent, whether as trustee or as King; or for that matter for the personal benefit of other traditional leaders.

[43] The affidavit of the Trust and Board records how the newly appointed members of the Board were called to induction meetings to be held from 19 to 23 June 2023. The purposes of the meetings were for the Board members to meet each other and the Trust executives, and to be familiarised with the operations of the Trust. The induction meetings had to be converted in part to an urgent Board meeting to deal with the problem of the fees owing to Strauss Daly Attorneys by the seventh respondent who had been represented by that firm in disputes over his accession to the throne. It was brought to the attention of the members of the Board that the previous chair of the board had made undertakings on behalf of the Trust to see to it that the fees were paid. According to the affidavit the members of the Board could not see the justification for such expenditure which was not catered for in the Trust's disbursement policy. They regarded themselves as in a precarious position. However, the Board decided that it could not repudiate the undertakings that had been made, and concluded an agreement with the attorneys in terms of which a down-payment of R1 million would be made, with the balance to be paid in 26 monthly instalments of a little over R200 000 each. (I was informed from the Bar that at the time the case was being argued about 13 such instalments remained to be paid.) Against this undertaking on behalf of the Trust, Strauss Daly Attorneys released the seventh respondent's files to his newly appointed attorneys. The seventh respondent was informed, in effect, that the payments to Strauss Daly

Attorneys would be settled against “the 5% of Trust income which is allocated for projects and causes of the Ingonyama”. I will revert to the question of this 5% allocation. It features in the Trust’s disbursement policy.

[44] As to other payments made by the Ingonyama Trust for the personal benefit of the trustee, I think that this is one of those rare occasions where a direct quotation from the relevant paragraphs of the affidavit is appropriate.

’63. Following the appointment of the current ITB, the members have come to learn of the concerning manner in which the Trust had previously been managed, particularly on the issue of payments and disbursements.

64. The Board has found many instances where payments were made for services which were not connected to the direct mandate of the Trust or permitted as expenses covered in the Disbursement Policy, such as meetings held in the Royal Family or the transportation of amabutho and the like. Further, there are records of two significant purchases of luxury vehicles which were bought by the Trust for the sole use of the Ingonyama as trustee of the Trust.

65. Further and of greater concern, there were a number of payments made which appear to be of a personal nature such as payments for accommodation at hotels for members of Royal Family, including the Ingonyama.

66. Furthermore, other members of the Royal Family have benefitted from the funds of the Trust including one of the Applicants herein. For example, there is a record of a payment made to the Southern Sun Hotel in Durban for an overnight stay by the First Applicant following an alleged trip to Pretoria to hand deliver a letter to the President. This trip was not a Trust related activity nor was it a permissible expense.

67. For the sake of completeness, annexed hereto marked “ITB 13” and “ITB 14” are two separate bundles illustrating the type of payments previously

permitted through Trust funds for the benefit of the Ingonyama and other persons. Such payments do not meet the requirements set out in the Disbursement Policy.

68. The conduct which the Applicants seem to complain of against the Trust and its Board is conduct historically perpetuated through and by the current Board's predecessors. The present Board has taken serious steps to ensure that it brings the Trust back to a place of compliance with legislation and its policies.

69. Therefore, it would be improper for the Applicants to persist with the relief it seeks against the Eighth and Ninth Respondents.'

[45] The bundles referred to in paragraph 67 of the affidavit are a little confusing at times, but they nevertheless reflect the expenditure of many millions of rands. Much of it occurred during the reign of the late King. One sees items such as R1.5 million to pay the King's taxes, R1.4 million to finance his son's wedding and R2.9 million for a new BMW motor vehicle.

[46] It is unsurprising in the light of the disclosures made in the affidavit delivered on behalf of the Trust, that counsel for the applicants abandoned the original qualification to the interdict sought in paragraph 3 of Part A of the notice of motion, that the interdict against paying personal expenses of the seventh respondent would not apply to "those funds authorised by duly constituted authority" prior to the appointment of the current Board.

[47] My conclusions regarding the interdicts sought against the Ingonyama Trust and its Board, based on the material which I have already discussed at some length in this judgment, are the following.

(a) Subject only to what I have to say about payment of the costs incurred by the seventh respondent whilst represented by Strauss Daly Attorneys, the Trust has made it clear that it regards the payment of such costs as beyond the

power and capacity of the Ingonyama Trust, and that the Board will not be paying any such costs.

(b) It is clear that the Board's view that the payment of any such costs is unlawful extends equally to the amounts it has paid and continues to pay to Strauss Daly Attorneys. Nevertheless, it concluded the contract with that firm of attorneys. The sole viable target of the relief sought in paragraph 4 of Part A of the notice of motion would be the payments being made to Strauss Daly Attorneys. No other costs have been identified in the papers. Any interdict granted at this stage against the payment of such legal costs would have to flow from a decision that the contract the Board concluded with the attorneys is unlawful and invalid; or unenforceable because it is contrary to public policy. In my view such an order cannot be granted if Strauss Daly Attorneys are not afforded an opportunity to be heard. That firm has not been joined in these proceedings. When this difficulty was put to counsel for the applicants during the course of argument his response was that perhaps Strauss Daly Attorneys could be joined when Part B of the notice of motion is placed before the court. Unfortunately that does not address the present predicament.

(c) One of the requirements for the grant of an interdict against future conduct is that the occurrence of the future harmful conduct should be "reasonably apprehended" (to adopt the terminology used in *Setlogelo v Setlogelo* 1914 AD 221 at 227). A well-grounded apprehension of harm is required. Save with regard to the costs discussed immediately above, such a reasonable apprehension has not been established.

(d) The same requirement, that of a well-grounded apprehension of harm, is also not satisfied in the case of the interdict sought against the payment of the personal expenses of the seventh respondent. The Board makes it clear that it agrees with the principle relied upon by the applicants, and that it will not be paying any such expenses.

(e) In view of that fact, and the fact that, in the light of the disbursement policy, the Board regards the so-called allocation of 5% of Trust income to the

seventh respondent as being for use in projects or causes (presumably community projects and causes) selected by the seventh respondent, one would expect the Board in the future (when it no longer has to pay instalments to Strauss Daly Attorneys) to monitor the use of those funds to ensure that they are not spent for the personal benefit of the seventh respondent.

(f) In the result the interdicts against the eighth and ninth respondents cannot be granted.

[48] I must deal briefly with the disbursement policy which features in this case. It will be recalled that the Trust's opposition to the application is directed at avoiding any order which would obstruct the Board following the dictates of the disbursement policy, the current version of which is dated 6 November, 2015.

[49] I am concerned at the tone of the Board's approach to the disbursement policy. The members appear to regard it as law. The extent of the rights and obligations of the Trust and its Board is determined by the provisions of the Ingonyama Trust Act and the regulations promulgated under that Act. A policy cannot sanction any deviation from the Act and Regulations.

[50] The question as to the lawfulness of the disbursement policy is not before me in this case. The applicants seek no relief with regard to the policy. Nevertheless, I must express some prima facie views concerning the policy to explain a qualification I am bound to add to this judgment.

[51] The history of the Ingonyama Trust expenditures on the personal expenses of the monarch, as it is laid out in the papers before me, suggests strongly that the allocation of 5% of Trust income to the monarch has been misused. Correspondence under the hand of the former chairman conveys that the previous Board was of the view that it was legitimate for the 5% allocation to be appropriated to the personal expenses of the monarch. For instance, one sees the following in a letter addressed to the Board by its pervious chairman in October 2022.

‘You would recall a few months ago (August 2022 to be exact) his majesty directed me to assist him in settling his outstanding debts from his allowances as a trustee. For the record there are funds due to him in terms of the disbursement policy. In terms thereof 5% of the Trust income is allocated to him. Secondly rental from Thanda Properties is set aside for him. I know we have made some payments towards settling some of his debts. In this regard I need a reconciled statement.’

[52] The provision of the disbursement policy which the Board relies upon for its understanding of the nature of the 5% allocation to the seventh respondent is clause 3.3.3 which reads as follows. (Clause 3 is a guide to the distribution of income generated in a particular area.)

‘Five (5) % commercial only would be made available to the Trustee in terms of the Ingonyama Trust Act. This would be utilised for the affairs of the Trust as per the provisions [and ?] in terms of the Ingonyama Trust Act and would be made available for the distribution for the benefit etc (*sic*) of members of tribes or communities in areas less well endowed.’

Then in clause 11.1, under the heading “Non-Allowable Expenditure”, this is listed.

‘Expenses that do not meet the test of legal, ethical or that are considered as individual enrichment. Individual benefit excludes the provisions already made for the benefit of Inkosi and Trustee in terms of Ingonyama Trust Act in this document.’

To my mind such ambiguities in the policy document are likely to produce arbitrary conduct. I find myself compelled to add that saying that something not sanctioned by the Ingonyama Trust Act is “in terms of the Ingonyama Trust Act” is at best misleading.

[53] As already mentioned, clause 3.3 of the policy sets out the Board’s guide to distribution of income derived from sources in a particular traditional council or community area. Benefits from such income are confined to that particular area. The policy discriminates against those who reside in areas which are not suited to commercial and other income-producing developments. Clause 3.3.2 provides that

10% of the income derived from such a source is to be distributed to the "Inkosi of that particular area or tribe."

[54] I find myself unable to reconcile these provisions of the disbursement policy, and others, with the Ingonyama Trust Act and the regulations promulgated thereunder. But of course, I have not had the benefit of any argument on these issues.

[55] The fact that I intend to grant no relief in favour of the applicants against the eighth and ninth respondents means that there is no order which directly obstructs the future implementation of the disbursement policy by the Board. For that reason, and because the Board opposed the application inter alia to avoid any order obstructing the implementation of the policy, I find it necessary to record that this judgment should not be interpreted to convey any endorsement of the policy. The success of the eighth and ninth respondents in avoiding an order which directly obstructs the implementation of the policy is merely incidental.

Paragraph 5 of Part A: Relief against the Premier.

[56] I turn now to the remaining interdict sought by the applicants, namely one affecting the positions of the fourth and fifth respondents (the Premier and the Director-General of the Office of the Premier, KwaZulu-Natal). It was originally broader than the amended form sought in argument. It was designed to cover the expenditure of public funds and resources in "promoting and supporting the personal interests" of the seventh respondent. What is sought now, pending the determination of Part B, reads as follows.

'Interdicting and restraining the fourth and fifth respondents from utilising or authorising in any manner or form the utilisation of any public funds and resources in relation to litigation relating to the protection of the status of the seventh respondent.'

[57] In my view the argument that the applicants lack *locus standi* to seek this relief is well founded. The requirement that the applicants should be the right persons to bring such proceedings is not met. I do not accept that they are

motivated by a concern over the misuse of public funds by the Premier in defence of the seventh respondent. They seek a personal advantage which no court can regard as legitimate; that is to say the benefit of litigating against someone who, for want of funds, cannot mount a proper defence.

[58] The adjustment vote to which I referred earlier when giving an account of the financial arrangements for the monarch and Royal Household reveals that R30 million was allocated towards legal fees incurred by the Royal Household. It particularises a more or less even split between costs incurred by the seventh respondent and costs incurred by the Royal family. The vote is for allocation to the Royal House Trust to be disbursed by it in meeting such expenses. The document was produced by the Premier's office and placed before the legislature for approval on the assurance that it is in accordance with the Public Finance Management Act and Treasury Regulations. No case is made out that the budget thus legislated is unlawful. Indeed, the founding papers do not deal with the KwaZulu-Natal Zulu Royal House Trust Act at all. Almost nothing is said in the founding papers to support the claim for an interdict against the fourth respondent, beyond the statement that it would be irrational for, *inter alia*, the fourth respondent "to offer financial and administrative support to the seventh respondent in circumstances where his appointment will in all likelihood be found to be unlawful."

[59] I conclude that the claim for an interim interdict against the fourth and fifth respondents is without merit.

Costs

[60] The prayer for costs in Part A of the notice of motion was that such should be paid by the respondents who oppose the application, including the costs of two counsel. The first to fifth respondents delivered affidavits which were explanatory in nature and designed to assist the court. They should be and are commended for that. However, they chose not to oppose the application. In those circumstances I do not believe it would be just to order the applicants to pay their costs.

[61] Otherwise the costs of this application should follow the result. As for the scale of costs on taxation, the parties agreed on what I have set out in the order.

I MAKE THE FOLLOWING ORDER.

(a) The application for relief under Part A of the notice of motion is dismissed.

(b) The applicants shall pay the costs of the seventh respondent and the eighth to twentieth respondents. The liability of the applicants for the payment of such costs is joint and several.

(c) The costs of two counsel shall be allowed. On taxation Scale C shall apply to senior counsel and Scale B to junior counsel.

OLSEN J

Date of Hearing: Friday, 26 April 2024
Thursday, 16 May 2024
Friday, 17 May 2024

Date of Judgment: 13 June 2024

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